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September 1, 2016

FOIA CONFIDENTIAL TREATMENT REQUESTED

Federal Election Commission
Office of Complaints Examination
and Legal Administration
Attn: Mary Beth deBeau, Paralegal
999 E Street, NW
Washington, DC 20436

Re: MUR 7122
American Pacific International Capital, Inc.
Wilson Chen
Gordon Tang
Huaidan Chen

On behalf of American Pacific International Capital, Inc. ("APIC"), Wilson Chen, Gordon Tang and Huaidan Chen (the "respondents"), we write in response to the complaint in MUR 7122 (the "complaint").

SUMMARY

The complaint, filed by the Campaign Legal Center, alleges that Gordon Tang and Huaidan Chen violated the prohibition on foreign nationals making contributions in connection with a federal election, that APIC violated the prohibition on providing substantial assistance in making such contributions, and that Wilson Chen violated the prohibitions on soliciting and providing substantial assistance in making such contributions, in violation of the Federal Election Campaign Act ("FECA"), 52 U.S.C. §30101, *et seq.* The contributions in question are two contributions made in 2015 from APIC to Right to Rise USA (ID: C00571372), an independent expenditure only political committee (Super PAC), supporting the presidential candidacy of Jeb Bush. The complaint bases its allegations entirely on inaccurate press reports and does not provide any additional, independent facts to support its assertions.

The contributions provided by APIC to the Right to Rise USA Super PAC were made entirely from funds wholly derived from net earnings generated by APIC in the U.S. and ultimately

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maintained in a separate ledger account within the APIC operating account. Moreover, the decision to make these contributions was made by Wilson Chen, a U.S. citizen, acting alone and in his capacity as the Executive Director of APIC, without any influence from any foreign national. Accordingly, because the complaint presents no clear facts that describe any violation of any statute or regulation, *see* 11 C.F.R. § 111.4(d)(3), the Commission should find no reason to believe the respondents committed any violation and close this matter.

FACTS

1. American Pacific International Capital, Inc. is a privately-held California corporation owned by Jag Pacific, Ltd. APIC was originally formed in Oregon in 1998 as Wilson Environmental Consulting, Inc. The name was amended to APIC in 2002. APIC converted to a California corporation in April 2016, and is now headquartered in San Francisco.
2. Gordon Tang and Huaidan Chen, Chinese nationals, are the majority shareholders of both Jag Pacific, Ltd. and APIC.
3. A diversified international investment holding company, APIC owns significant real estate assets in the U.S., including hotels and a large shopping mall on the West Coast, located in the San Francisco Bay area.
4. APIC maintains revenue generated in the U.S. in an operating account held within the U.S. at Bank of America.
5. All political contributions made by APIC were made solely from a separate ledger account maintained within this operating account, and no other funds are used to make such contributions.
6. Wilson Chen, Executive Director of APIC, is a U.S. citizen, having received his citizenship in 2005.
7. As Executive Director, Mr. Chen directly oversees APIC's U.S. operations. He has represented APIC in its major financial transactions in the U.S. and signed for the company's significant acquisitions (transactions ranging from \$20m to more than \$35m). For example, Mr. Chen was responsible for APIC's decision to invest in the KOIN Tower (located in Portland, Oregon), APIC's largest investment. He signed all closing documents for the purchase and was granted broad authority in the KOIN Tower's operating agreement. (See Appendix A). This example is consistent with the broad decision-making authority exercised by Mr. Chen in managing APIC's affairs. Mr. Chen also represented APIC in the purchase of all five hotels in APIC's portfolio and The Globe (a shopping mall located in the San Francisco Bay area).

8. Wilson Chen is the sole decision-maker with respect to political contributions made in connection with U.S. elections.
9. On January 30, 2015, APIC closed on the sale of the KOIN Tower, located in Portland, Oregon, generating a net profit of more than \$11 million.
10. On March 26, 2015, Wilson Chen instructed APIC's accounting department to wire \$1 million to Right to Rise USA from the net proceeds of the sale of the KOIN Tower.
11. On June 25, 2015, Wilson Chen instructed APIC's accounting department to wire \$300,000 to Right to Rise USA from the net proceeds of the sale of the KOIN Tower.
12. Jennifer Zhang, Chief Financial Officer of APIC, has submitted a declaration (see Appendix B) attesting both to the source of the funds used to make the contributions to Right to Rise USA and to Wilson Chen's sole decision-making authority with respect to political contributions made in connection with U.S. elections.
13. Jennifer Zhang is a citizen of the United States, having received her citizenship in 2005.

DISCUSSION

Foreign nationals are prohibited from directly or indirectly making a contribution in connection with a Federal, State, or local election in the United States. 52 U.S.C. §30121(a)(1). For these purposes, the term "foreign national" includes both "an individual who is not a citizen of the United States or a national of the United States," 52 U.S.C. §30121(b)(2), and "a partnership, association, corporation, organization, or other combination or persons organized under the laws of or having its principal place of business in a foreign country," 22 U.S.C. §611(b)(3).

Although foreign nationals are prohibited from participating in the U.S. political process, the Federal Election Commission ("FEC") has consistently held that a wholly owned subsidiary of a foreign corporation is not a foreign national under the statute as long as the subsidiary is both organized under the laws of a U.S. state and has its principal place of business within the U.S. AO 2006-15 (TransCanada); AO 2000-17 (Extendicare Health Services, Inc.). As noted above, APIC is a California corporation with its principal place of business in San Francisco, CA.

The FEC has also outlined specific conditions that must be met for a U.S. subsidiary of a foreign corporation to participate in the political process. First, although 11 C.F.R. §110.20(b) restricts foreign nationals from making expenditures, contributions and disbursements in connection with elections, the FEC has concluded that a U.S. subsidiary can make contributions as long as the money was wholly derived from its net earnings generated within the U.S. and where the U.S. subsidiary can "demonstrate through a reasonable accounting method that it had sufficient funds in its accounts, other than funds given or loaned by its foreign national parent corporation, from which the donations were made." AO 1992-16 (Nansay Hawaii, Inc.); AO 2006-15 (TransCanada).

In fact, APIC's contributions to Right to Rise USA emanated from the net proceeds of the company's January 30, 2015 sale of the KOIN Tower located in Portland, Oregon. The sale of the KOIN Tower generated a net profit of more than \$11 million. Both of APIC's subsequent contributions—the first in March 2015, the second in June 2015—to Right to Rise USA came out of a specific APIC ledger account (established for the purpose of making political contributions and funded by U.S. derived revenue) maintained within the APIC operating account. At no time did the U.S. derived funds in that account go below the amount necessary to cover these political contributions.

The second condition that must be met for a U.S. subsidiary of a foreign corporation to participate in the political process pertains to the control over the funds and the ultimate decision to make a political contribution. 11 C.F.R. §110.20(i) prohibits a foreign national from directing, controlling, participating, or otherwise administering the decision-making process of any person or organization, in the decisions regarding participation in elections. In AO 2000-17 (Extendicare Health Services, Inc.), the FEC concluded that a U.S. subsidiary of a foreign corporation could establish a corporate PAC and make political contributions from that PAC if the decision's regarding such contributions were made entirely by U.S. citizens.

Similarly, by establishing an account of strictly U.S.-generated revenue, over which decision-making authority is vested in and exercised by only U.S. citizens, U.S. subsidiaries of foreign corporations may make contributions to a Super PAC. It was with this understanding of the statute and regulations that APIC made the aforementioned political contributions to the Right to Rise USA Super PAC.

Each of the complaint's allegations of campaign finance violations are belied by the fact that, at the time that APIC made the political contributions to Right to Rise USA, the company's Executive Director, Wilson Chen, a U.S. citizen, maintained and exercised sole discretion regarding all political contributions. In this capacity, he functioned as a "special committee" with sole decision-making authority over all political contributions. See AO 2000-17 (Extendicare Health Services, Inc.). Jennifer Zhang, APIC's chief financial officer, has attested to the nature of Mr. Chen's role at the company in an accompanying declaration (Appendix B).

With regard to political contributions, Mr. Tang's general directive to Wilson was that all political contributions must be legal and within the financial ability of the company, so as to not impact company operations. Indeed, there was no specific directive from Mr. Tang regarding the contributions to the Right to Rise Super PAC. This is consistent with the requirements in AO 2000-17 (Extendicare Health Services, Inc.) wherein the FEC concluded that the foreign parent corporation of Extendicare Health Services, Inc. was permitted to make the general decision to establish a corporate political action committee, and set specific "not-to-exceed" budget limits for the fund.

Mr. Chen's exclusive control over APIC's political contributions is consistent with his role as the U.S. corporate official with broad decision-making authority over the company's financial

decisions. For example, as noted above, Mr. Chen was responsible for APIC's decision to invest in the KOIN Tower, APIC's largest investment. He signed all closing documents for the purchase and was granted broad authority in the KOIN Tower's operating agreement. (See Appendix A). This example is consistent with the broad decision-making authority exercised by Mr. Chen in managing APIC's affairs.

Furthermore, the complaint alleges that Wilson Chen and Gordon Tang made statements suggesting that Mr. Tang may have violated FEC regulations barring foreign nationals from directly or indirectly participating in the decision-making process regarding the making of political contributions. These allegations are based on an inaccurate English translation (from Cantonese) of a published interview with Mr. Tang. Contrary to the translation published in *The Intercept* article, which is cited in the complaint, Mr. Tang did not say that Mr. Chen discussed the contributions with him beforehand. Rather, Mr. Tang reported that "Wilson said to donate, so it was done" (by Wilson using APIC funds). *The Intercept* conveniently translated the Cantonese to have a different, inaccurate meaning. This is regrettable, as is the decision by the Campaign Legal Center to file a complaint based solely on this inaccurate press account.

In fact, Mr. Tang was made aware of the contributions from APIC to Right to Rise USA only after the fact; in other words, after the contributions were made to the Super PAC. This notification was in no way an attempt to seek approval from any of the APIC board members, including Mr. Tang and Ms. Chen, nor was it an attempt to solicit or facilitate a contribution from a foreign national. To reiterate, Mr. Chen acted alone in deciding to approve the contributions to Right to Rise USA.

CONCLUSION

With no facts indicating a violation of federal law, the Commission should find no reason to believe that respondents committed any violation of any statute or regulation and close this matter forthwith.

FOR THE RESPONDENTS



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**OPERATING AGREEMENT
of
KOIN TOWER, LLC**

(an Oregon limited liability company)

THIS OPERATING AGREEMENT, dated November 24, 2009, is made by APIC, LLC, an Oregon limited liability company as the sole member of the limited liability company (the "Member"), and KOIN Tower, LLC (the "Company").

1. **Articles of Organization.** The Articles of Organization were filed with the Oregon Secretary of State on November 23, 2009.
2. **Name.** The name of the limited liability company is KOIN Tower, LLC.
3. **Purpose.** The purpose and business of the Company is to own real property, enter into any agreements to which the Company is a party, to engage in any other lawful business, and to exercise all other powers necessary or reasonably connected or incidental to such purpose and business that may be legally exercised by the Company.
4. **Duration.** The Company shall exist perpetually.
5. **Principal Place of Business.** The principal place of business of the Company shall be located in Portland, Oregon.
6. **Registered Office and Registered Agent.** The Company's initial registered office shall be at Portland World Trade Center, 121 SW Salmon St., Suite 11-F, Portland, Oregon 97204, and the name of its initial registered agent at such address shall be APIC, LLC.
7. **Member.** The name and address of the Member is as follows:

Name

APIC, LLC

Address

Portland World Trade Center
121 SW Salmon St., Ste. 11-F
Portland, Oregon 97204

8. **Management.** The Company shall be manager-managed. The Manager shall manage the business and affairs of the Company and shall have the authority to take all actions and execute all documents on behalf of the Company. The initial Manager of the Company shall be Wilson Chen.

9. **Capital Contribution.** Promptly upon execution of this Agreement, the Member will make a capital contribution to the Company in the amount of \$500,000.

10. **Liability of Member.** The Member will not be personally liable merely by reason of being a Member, for any debt, obligation or liability of the Company beyond the Member's capital contribution, except as otherwise provided by the Oregon Limited Liability Company Act (the "Act").

11. **Indemnification.** The Company shall indemnify the Member for all loss, liability or expense incurred by the Member in connection with the Company's business to the fullest extent permitted by the Act.

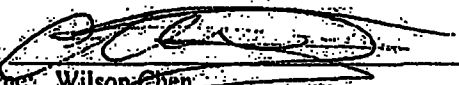
12. **Governing Law.** This Agreement shall be construed and enforced in accordance with the internal laws of the State of Oregon including without limitation, the Act.

13. **Amendments.** This Agreement may be amended only in writing by the Member.

14. **Creditors.** None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company or any other person other than the Member.

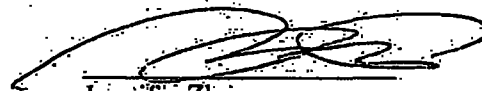
Executed as of the date first written above by the undersigned.

APIC, LLC,
an Oregon limited liability company

By: 
Name: Wilson Chen
Its: President and CEO

DECLARATION OF JENNIFER ZHANG

1. I am the chief financial officer of American Pacific International Capital, Inc. ("APIC"). I have served in this position since 2010. I became a U.S. citizen in 2005. I am married to Wilson Chen, the Executive Director of APIC.
2. In my capacity as CFO, I have firsthand knowledge of the accounting and financial practices of APIC. This includes APIC's political contributions in connection with U.S. elections.
3. APIC maintains a separate ledger account for making political contributions in connection with U.S. elections, which is funded entirely from U.S. derived resources.
4. On January 30, 2015, APIC closed on the sale of the KOIN Tower in Portland, Oregon, generating over \$30 million in gross profits.
5. A portion of the net earnings derived from this sale, over 11 million were transferred to APIC. APIC made its contributions to Right to Rise USA with money wholly derived from our net earnings from US investment.
6. Wilson Chen was the sole decision-maker with respect to these political contributions.
7. On March 26, 2015, Mr. Chen instructed APIC's accounting department to wire \$1 million to Right to Rise USA.
8. On June 25, 2015, Mr. Chen instructed APIC's accounting department to wire \$300,000 to Right to Rise USA.
9. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on September 1, 2016.



Jennifer Zhang
Chief Financial Officer
American Pacific International Capital, Inc.

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